

**JUDITH A. HARVEY**  
Claimant

**UNITED METHODIST YOUTHVILLE**  
Respondent

**ROYAL & SUN ALLIANCE**  
Insurance Carrier

## ORDER

Respondent appeals the post-award medical Order of Administrative Law Judge Nelsonna Potts Barnes dated September 2, 2004. Claimant was authorized to receive medical treatment in the state of Arkansas, where she has relocated, with respondent being ordered to provide a list of three physicians located in the community near claimant's residence for treatment. Claimant was then instructed to select a treating physician from the list of three for treatment in Arkansas. This matter was placed on the Board's Summary Calendar.

Claimant appeared by her attorney, R. Todd King of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Michael P. Bandré of Overland Park, Kansas.

The Appeals Board has considered the record (including the transcript of Post Award Hearing dated August 31, 2004; the transcript of the evidentiary deposition of Pedro A. Murati, M.D., taken June 12, 2003; the transcript of the evidentiary deposition of Anthony G.A. Pollock, M.D., taken July 28, 2003; and the transcript of Regular Hearing held June 10, 2003). The Appeals Board has adopted the stipulations entered into by the parties at the time of regular hearing.

**ISSUES**

Whether the Administrative Law Judge exceeded her jurisdiction in ordering the respondent to provide out-of-state medical treatment for the claimant when the respondent had already authorized an in-state physician for the evaluation and treatment of the claimant, noting that the authorized physician is the same physician who did the surgery on the claimant.<sup>1</sup>

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Appeals Board finds the Order of the Administrative Law Judge (ALJ) should be affirmed.

Claimant suffered accidental injuries to her right knee on both September 29, 1999, and October 4, 1999. The matter originally went before the ALJ, who, in her Award of September 12, 2003, awarded claimant a 19.5 percent functional impairment to the right lower extremity. The matter was appealed to the Workers Compensation Board (Board), who, in its March 9, 2004 Order, modified the Award to an 8 percent impairment to the right lower extremity.

Claimant, after the injury, relocated to the state of Arkansas, which created a round trip of approximately 720 miles from her home to Wichita, Kansas, the location of her treating physician, Anthony G.A. Pollock, M.D.

Claimant served a seven-day demand on respondent pursuant to K.S.A. 44-534a, requesting additional medical treatment. Claimant's Application For Post Award Medical benefits pursuant to K.S.A. 2003 Supp. 44-510k was filed on May 3, 2004. The Post Award Hearing, held August 31, 2004, in front of ALJ Barnes, included statements of counsel only, with no testimony being provided by claimant. At that time, it was announced by claimant's attorney that claimant was requesting that an authorized treating physician be named in Arkansas in order to allow claimant to avoid the lengthy trip from Arkansas to Wichita, the location of her current authorized physician, Dr. Pollock. Claimant's attorney also stated on the record that claimant was concerned regarding the treatment which had been provided by Dr. Pollock at the time of the original surgery in January of 2001. Claimant also has significant concerns about future treatment, as both Dr. Pollock and claimant's expert, Pedro A. Murati, M.D., opined that claimant would probably need additional treatment in the future, potentially as extensive as a total joint replacement.

Respondent argues that claimant should be required to return to Dr. Pollock, the treating physician in this matter, as Dr. Pollock is the most knowledgeable physician

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<sup>1</sup> Application For Review of Award (Sept. 16, 2004).

regarding claimant's condition and ongoing symptoms. Respondent also argues if additional treatment is necessary in the future, Dr. Pollock would be the most qualified to provide that treatment. Respondent also objects to claimant's last minute complaints regarding Dr. Pollock's previous treatment, noting in its brief that no such complaints were noted at the time of the original hearing.

Claimant argues that the ALJ has the authority to authorize an out-of-state physician to provide medical treatment and that the distance involved in claimant having to return to Wichita for ongoing treatment with Dr. Pollock justifies a doctor being appointed in Arkansas, near where claimant lives. Claimant argues that it was appropriate for the ALJ to order an out-of-state physician to provide treatment for claimant, especially in a situation such as this, where claimant has expressed concern regarding Dr. Pollock's ongoing medical care.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>2</sup> It is the duty of the employer to provide the services of a health care provider "as may be reasonably necessary to cure and relieve the employee from the effects of the injury."<sup>3</sup>

If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers who, if possible given the availability of **local** health care providers, as not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider.<sup>4</sup> (Emphasis added.)

K.S.A. 44-510k(a) allows for a request by a claimant for post-award medical treatment in such form as the Director may require. The administrative law judge before whom the post-award medical hearing occurs has the authority to award medical treatment relating back to the entry of the underlying award, although that award is limited in that "in no event shall such medical treatment relate back more than six months following the filing of such application for post-award medical treatment."<sup>5</sup>

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<sup>2</sup> K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

<sup>3</sup> K.S.A. 44-510h(a).

<sup>4</sup> K.S.A. 44-510h(b)(1).

<sup>5</sup> K.S.A. 44-510k(b).

Respondent argues claimant is not entitled to out-of-state health care, but should be restricted to utilizing the treating physician already authorized by respondent. The Board has held that while K.S.A. 1999 Supp. 44-510 (a predecessor to the current statute) requires a respondent and its insurance carrier to provide such medical services as may be reasonably necessary to treat the claimant, the Act does not prohibit out-of-state treatment.<sup>6</sup> The Board, in *Hunter*, determined that the administrative law judge has the authority to appoint out-of-state doctors as authorized treating physicians where it is deemed appropriate.

In this instance, the Board agrees with the ALJ that claimant's circumstance justifies an appointment of a health care provider in Arkansas where claimant has relocated. Both the distance involved between Arkansas and Wichita, Kansas, and claimant's concern regarding ongoing medical treatment from Dr. Pollock supports the ALJ's determination that respondent should submit a list of three physicians, located in a community near claimant's residence, from which claimant shall designate the authorized treating physician pursuant to the limitations set forth in the ALJ's Order of September 2, 2004.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the post-award medical Order of Administrative Law Judge Nelsonna Potts Barnes dated September 2, 2004, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January, 2005.

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BOARD MEMBER

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<sup>6</sup> *Hunter v. Manpower Temporary Service*, No. 217,644, 1997 WL 107610 (Kan. WCAB Feb. 27, 1997).

c: R. Todd King, Attorney for Claimant  
Michael P. Bandré, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director